

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Joint Application of Comcast Corporation, Time Warner Cable Inc., Time Warner Cable Information Services (California), LLC, and Bright House Networks Information Services (California), LLC for Expedited Approval of the Transfer of Control of Time Warner Cable Information Services (California), LLC (U6874C); and the Pro Forma Transfer of Control of Bright House Networks Information Services (California), LLC (U6955C), to Comcast Corporation Pursuant to California Public Utilities Code Section 854(a).

Application 14-04-013
(Filed April 11, 2014)

And Related Matter.

Application 14-06-012
(Filed June 17, 2014)

**RESPONSE OF THE JOINT INTERVENORS TO THE MOTION OF THE
UTILITY REFORM NETWORK TO TRANSMIT A COPY OF THE
CONFIDENTIAL RECORD IN CONSOLIDATED PROCEEDINGS TO THE
FEDERAL COMMUNICATIONS COMMISSION**

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Joint Application of Comcast Corporation, Time Warner Cable Inc., Time Warner Cable Information Services (California), LLC, and Bright House Networks Information Services (California), LLC for Expedited Approval of the Transfer of Control of Time Warner Cable Information Services (California), LLC (U6874C); and the Pro Forma Transfer of Control of Bright House Networks Information Services (California), LLC (U6955C), to Comcast Corporation Pursuant to California Public Utilities Code Section 854(a).

Application 14-04-013
(Filed April 11, 2014)

And Related Matter.

Application 14-06-012
(Filed June 17, 2014)

**RESPONSE OF JOINT INTERVENORS TO THE EMERGENCY MOTION OF
THE UTILITY REFORM NETWORK TO SEND THE CONFIDENTIAL
RECORD TO THE FEDERAL COMMUNICATIONS COMMISSION**

I. INTRODUCTION

Pursuant to Rule 11.1 of the California Public Utilities Commission's (CPUC) Rules of Practice and Procedure (Rules) and the February 19, 2015 Assigned Administrative Law Judge (ALJ) Ruling granting, with modification, the motion of The Utility Reform Network (TURN) for an order shortening time to respond to its emergency motion to transmit a copy of the confidential record to the Federal Communications Commission (FCC), The Greenlining Institute (Greenlining), California Association of the Competitive Telecommunications Companies (CALTEL), the Writers Guild of America, West Inc., (WGAG), Center for Accessible Technology (CforAT), Media Alliance, Office of Ratepayer Advocates (ORA) and Consumers Union (collectively, "Joint Intervenors") file this response to the Motion of TURN for an order

that the confidential versions of all parties' briefs, declarations and exhibits, and all data request questions and responses of these consolidated proceedings be provided to the FCC as soon as practicable. Joint Intervenor agree this request is consistent with Assigned Commissioner and ALJ's desire to inform the FCC of the effects of the merger on California on a timely basis.

II. DISCUSSION

A. Joint Intervenor Support TURN's Motion

It is critical for the FCC to understand the impact of the proposed merger on California, as the merger's effects in California will be particularly significant. In California, Comcast will grow from having 33.7% of the market pre-merger to more than 84% of the market post-merger.¹ As TURN noted in its Motion, the current presence of Comcast Corporation (Comcast) as the dominant broadband provider in northern California and Time Warner Cable, Inc. (TWC) as the dominant broadband provider in southern California exacerbates the impact of the proposed merger on California. In addition, if the proposed merger and related transactions are approved, a direct competitor to a post-merger Comcast, Charter Communications (Charter), will be eliminated.

For these reasons, Joint Intervenor believe it would be highly beneficial to provide the FCC with the entirety of the record in this proceeding. Providing the confidential briefs, declarations and data requests responses now will not harm any party and will not in any fashion preclude the CPUC from providing its final decision on the proposed merger to the FCC. It will ensure, however, that the FCC has the benefit of receiving the record developed to date in California in a timely fashion.

The FCC's informal time clock is currently set to expire on March 28, 2015. The FCC may extend that timeline, as a result of ongoing discovery (Comcast, TWC and Charter are still producing documents to the FCC) or because of an ongoing discovery

¹ These are the public numbers; the confidential numbers from ORA's brief, which are more accurate than the public numbers, are even higher.

dispute concerning programming. Whether or not the FCC stops the clock again, the Joint Intervenor strongly support TURN's motion to send the confidential briefs, exhibits and declarations, and all data request questions and responses to the FCC as soon as possible. Once the FCC has the information from California, it will need time to review and analyze it, and determine what impact California's analysis has on its national review of the merger.

After the CPUC votes out a final decision on this matter, Joint Intervenor expect that the CPUC will also send its final decision to the FCC. However, given CPUC processes, there is no certainty that the CPUC will act before the FCC renders a decision. As it stands now, the earliest the CPUC may vote on the proposed decision is March 26, 2015, and the earliest date the FCC may make a determination is March 28, 2015, a Saturday. Thus, if the CPUC and FCC both stick to their current timelines, the FCC will have the benefit of knowing what the CPUC decision is for only one business day prior to rendering a decision. This is certainly not enough time for the CPUC proceeding to have any impact or influence on the FCC's decision-making process, which has been an express goal of the Assigned Commissioner and ALJ in these proceedings.² And the FCC's clock may expire before any CPUC decision on the proposed merger is ever formally issued. Therefore, it is critical for the CPUC to at least send the substantive record and data requests responses from these consolidated proceedings over to the FCC as soon as practicable.

B. Recommended Points of Clarification

Joint Intervenor have a few points of clarification regarding TURN's Motion. First, although the data request questions and responses are not technically part of the CPUC's record in the consolidated proceedings (unless they are attached to a brief), they

² August 14, 2014 Scoping Memo and Ruling of Assigned Commissioner and ALJ at 5-6; ALJ's Ruling Suspending Schedule, Grant Official Notice, and Set Law and Motion Hearing, October 20, 2014; ALJ's Ruling Resetting Schedule of Proceeding & Granting Official Notice, November 13, 2014 at 2. At that point the schedule shown was for a Proposed Decision to be issued on January 12, 2015 and an Agenda Decision on February 12, 2015.

are key data for the FCC to have in its review of the merger. Much like the CPUC received the responses to the FCC requests for information, the FCC should have the benefit of receiving the discovery from the California proceeding, including all data request questions, responses and attachments to those responses.

Second, although TURN's request asks for the CPUC to send the confidential briefs, including all exhibits and declarations, and data request questions and responses, to the extent that parties only filed public briefs, exhibits and/or declarations, or to the extent that there were only public versions of the data request questions and responses, the CPUC should send the public versions.

Third, regarding the specific data requests, Joint Intervenors note that data request question one in ORA's second set of data requests to Comcast, TWC and Charter asks for a complete copy of the FCC's requests for information.³ ORA also asked Comcast, TWC and Charter in the second set of data requests for all updates to the FCC requests for information.⁴ To the extent that Comcast, TWC and Charter certify that the information they provided to ORA (and also TURN and Greenlining) in response to question number 1 from ORA's second set of data requests to Comcast, TWC and Charter, and the information question 18 to Comcast, question 14 to TWC and question 11 to Charter from the second set of data requests,⁵ is the same as what they provided to the FCC, the CPUC does not need to provide such information back to the to the FCC. However, to the extent that responses to FCC requests for information are attached to parties' briefs, or to

³ ORA Data Request to Comcast, Data Request No. ORA-A.14-04-013.A.14-06-012.PHH-4003, Question 1; ORA Data Request to TWC, Data Request No. ORA-A.14-04-013.A.14-06-012.PHH-103, Question 1; ORA Data Request to Charter, Data Request No. ORA-A.14-04-013.A.14-06-012.PHH-303, Question 1.

⁴ ORA Data Request to Comcast, Data Request No. ORA-A.14-04-013.A.14-06-012.PHH-4003, Question 18; ORA Data Request to TWC, Data Request No. ORA-A.14-04-013.A.14-06-012.PHH-103, Question 14; ORA Data Request to Charter, Data Request No. ORA-A.14-04-013.A.14-06-012.PHH-303, Question 11.

⁵ ORA Data Request to Comcast, Data Request No. ORA-A.14-04-013.A.14-06-012.PHH-4003, Questions 1 and 18; ORA Data Request to TWC, Data Request No. ORA-A.14-04-013.A.14-06-012.PHH-103, Questions 1 and 14; ORA Data Request to Charter, Data Request No. ORA-A.14-04-013.A.14-06-012.PHH-303, Questions 1 and 11.

the extent that the discovery provided to parties via the online E-discovery platform is different than what Comcast, TWC and Charter provided to the FCC, then the CPUC should provide those data request responses to the FCC.

Fourth, the Joint Intervenors request that in addition to the materials that TURN requested the CPUC send to the FCC, the CPUC also send a confidential version of ORA's February 5, 2015 Motion for Leave to Late-File a Supplemental Declaration, along with the attached declaration exhibits (Motion to File a Supplemental Declaration). The attachments to this Motion contain a substantive analysis that TWC views Comcast as a direct competitor beyond its current operating footprint. ORA's Motion to File a Supplemental Declaration also states that the documents that are the subject of the Supplemental Declaration "undermine the primary factual claim being advanced by the Joint Applicants in support of their proposed merger – i.e., that by virtue of their non-overlapping geographic operating territories, TWC, Comcast, Charter and Bright House do not compete against each other, and for that reason the merger will not diminish competition in the broadband, MPVD and voice telephone markets that the Joint Applicants serve."⁶ Whether or not the CPUC ultimately grants ORA's Motion to File a Supplemental Declaration, the substance of the Motion and attached materials are very relevant to the FCC's review of the proposed merger and may help inform the FCC's decision-making process.

Fifth, in order for the FCC to consider the California material (briefs, exhibits and declarations, data request questions and responses and ORA's Motion to File a Supplemental Declaration) as part of the formal record of the FCC's proceeding, the Joint Intervenors request that the CPUC formally file the materials with the FCC via a motion or comments in the FCC's proceeding on the proposed merger between Comcast and TWC, MB Docket 14-57, requesting that the FCC accept these materials as part of the record. In this way, the FCC may rely on the materials provided in any reports, decisions

⁶ ORA Motion to File Supplemental Declaration at 1 (quoting Attachment A, Selwyn Supplemental Declaration at 3, ¶ 4).

or other documents it issues in its merger proceeding. If it would be useful to the CPUC, Joint Intervenors could draft a sample pro forma motion or comments for the CPUC's consideration to send to the FCC.

Sixth, Joint Intervenors understand that Joint Applicants⁷ have confidentiality concerns regarding providing this information to the FCC. The Joint Intervenors are confident that the CPUC can handle this issue. The CPUC has signed the FCC's Joint Protective Order and may therefore submit these materials under the FCC's Protective Order, using the confidential designations Joint Applicants have used, except to the extent that the Assigned ALJ has determined that certain materials are public pursuant to his February 13, 2015 Ruling.

Lastly, to the extent that the Assigned Commissioner or ALJ may not have a complete record of all of the data request questions and responses, Joint Intervenors recommend that the Assigned ALJ give each party that issued data requests five business days from the date of the ALJ ruling granting TURN's motion to provide a certified copy of the confidential version (or public version if there is no confidential version) of the data request questions and responses, including all materials the Joint Applicants provided in support of their response, on a CD-ROM. The CD-ROM should be labeled with the CPUC's proceeding numbers, the title of the proceeding, the name of the party issuing the data request and the name of the Joint Applicant (Comcast, TWC, Charter or Bright House Networks) responding to the data request.⁸

III. CONCLUSION & REQUESTED RELIEF

For the reasons discussed in this Response, the Joint Intervenors request that the Assigned Commissioner and ALJ provide the full confidential versions of parties' briefs,

⁷ Comcast, TWC, Charter and Bright House Networks.

⁸ If the CPUC does not have a complete set of the other documents to send to the FCC, Joint Intervenors recommend giving each party five business days from the date of the ALJ ruling granting TURN's motion to provide a certified copy of its confidential brief, declarations and exhibits, and requesting ORA to provide its Motion to File a Supplemental Declaration. If a party only filed a public brief, exhibits and/or declarations, then that party should provide the public version.

declarations, data requests questions and responses and ORA's Motion to File a Supplemental Declaration in these consolidated proceedings as soon as possible to the FCC and the FCC staff conducting the review of this merger. To the extent that certain parties only filed public briefs, exhibits and declarations, or only wrote or produced public data request questions and responses, including all supporting materials, then the CPUC should send the public versions. The Joint Intervenors also clarify certain aspects of TURN's request in this response, as discussed above.

Respectfully submitted,

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